

DAKE (J. P.)

MEDICAL LEGISLATION

IN THE

UNITED STATES.

A DISCUSSION OF THE PRINCIPLES INVOLVED IN AMERICAN LAWS
REGULATING THE PRACTICE OF MEDICINE SHOWING
THEIR CHARACTER AND RESULTS.

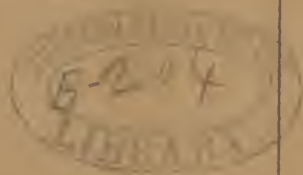
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THE influence of legislative enactments upon the practice of medicine is a matter of interest to the laity as well as the profession, to the subjects as well as the practitioners of the art of healing, and hence the propriety of its general discussion.

The first American school for the education of medical men was organized in the city of Philadelphia just one hundred and twenty-one years ago, and the second, in New York city six years later. When it is remembered that Dr. Benjamin Franklin was president of the board of trustees, shaping and controlling the Philadelphia College, and that Dr. Benjamin Rush was its brightest and most influential professor for more than forty years, it will not seem a matter of surprise when it is said, that to that institution is chiefly due the credit of having made the practice of medicine a liberal profession, a free and progressive calling, in America.

In an introductory lecture to his class, eighty-two years ago, Dr. Rush, while enumerating the obstacles to the progress of scientific medicine, mentioned as one of the chief: "The interference of governments in prohibiting the use of certain remedies and enforcing the use of others by law."

The effect of this mistaken policy, he considered, "as hurtful to medicine as a similar practice, with respect to opinions, had been to the Christian religion." And, as another obstacle, he mentioned: "Conferring exclusive privileges upon bodies of physicians, and forbidding men of equal talents and knowledge, under severe penalties, from practicing medicine within certain districts of cities and countries." He con-

sidered "such institutions, however sanctioned by ancient charters and names, as the bastiles of medical science."

In speaking of these obstacles, Dr. Rush had in mind the laws, made in older countries, to check the introduction of new methods and new remedies, and so to prevent innovation and infringement upon what was time-honored and orthodox.

He remembered the arbitrary and unjust discriminations made in favor of certain schools and societies of medical men and against others, whereby excellence was sacrificed to age, intrigue, and favoritism.

As another important obstacle to medical progress the doctor mentioned, "the refusal in universities to tolerate any opinions in the private or public exercises of candidates for degrees in medicine, which are not taught nor believed by their professors, thus restraining a spirit of inquiry in that period of life which is most distinguished for ardor and invention in our science." And he went on to say: "It was from the prevalence of this conduct that Dr. Adam Smith has called universities 'the dull depositories of exploded opinions.'"

With such a lively remembrance of the barriers placed in the way of medical progress, it is no wonder that Dr. Rush and Dr. Franklin should have labored to prevent legislation calculated to favor medical guilds and drug monopolies in the New World. Actuated by a love of truth, and having little veneration for the simply antique or the orthodox, they opposed all arbitrary laws, and favored the greatest liberty in scientific pursuits.

Such was the progress of medical teaching, inspired by liberal sentiments that, not only Pennsylvania and New York, but also Massachusetts and Maryland, had, in a few years, each its university, with a medical department. And such was the excellence of the instruction given, that Dr. David Hosack, in his introductory lecture to the Class, in New York, November 3d, 1813, said:

"In the profession of medicine it may already be said that, in the United States, we possess all the necessary resources for the most finished system of education that can be obtained in any part of the world, not excepting the justly-celebrated schools of Edinburgh, London, and Paris."

But, as the fathers of American freedom passed away, and those came into place and power who knew less of the evils of enforced conformity and the advantages of a liberal policy, the spirit of pride and pomp grew apace, and medical schools

and medical societies began to claim prerogatives, and seek a control such as exercised in the Old World. State enactments were called for, compelling every practitioner to possess himself of a diploma or a license before assuming the care of the sick, and the diploma could be had only at the pleasure of the schools, or of the friends of the schools.

One State after another yielded to the demand of the schoolmen, till the statute-books of several bore the record of the "exclusive privileges" and intolerance so much dreaded and denounced by the great and good Dr. Rush.

After years of persecution and litigation to keep out "Thomsonianism," and to suppress "irregulars," and to protect orthodoxy, as represented by the schools, and, after mountains of proof had been accumulated, showing the destructiveness of bloodletting and mercurial salivation, and the uselessness of many other like measures of orthodoxy, the practical sense of the people was shown by the repeal of the arbitrary enactments, or the consignment of them to the category of obsolete and neglected laws. New Jersey was the last to wipe out her acts, granting to certain orthodox colleges the exclusive right of conferring acceptable and authoritative diplomas upon medical men within her borders.

In March, 1854, her laws, regulating the practice of medicine, were so amended as to allow a graduate of any duly chartered and organized medical school, regardless of his therapeutic *tends* and peculiar means of cure, to collect fees for services rendered.

But, as legal restraints were removed from the reformers, and they came to have colleges and societies of their own, the process of crystallization and resistance to outside forces began in them.

At the close of the great civil war, which had called a large number of medical men to positions of dignity and authority in the army and navy, there came a renewal of effort in behalf of a medical oligarchy. The party that had called itself "regular," wherever able, endeavored to seize the arm of the law, and to turn its force against all "irregulars," and, where not able to accomplish this, it sought its object by compacts with the reformers.

In Texas and Alabama, all authority to regulate the practice of medicine was handed over by legislative enactment to old-school medical associations.

In Illinois and New York, and some other States, the authority was divided among the several schools of medicine,

represented by State societies and college faculties. Illinois now has a board of health, made up of allopaths, homœopaths, and eclectics, to which is delegated power to determine what particular colleges may send their graduates to practice among her citizens, and to examine practitioners who have no medical diplomas in such manner and by such standards as may suit the views of its individual members.

New York allows no physician to practice or sign the medical certificates required by law, unless he has a diploma, issued by some medical school, or one indorsed by some medical school, chartered and governed by her laws.

Alabama has authorized the old-school medical association of that State to pass upon the qualifications of all practitioners offering service to the sick, and the agents employed to carry out the will of that medical inquisition, have proceeded to characterize and classify medical men after a fashion peculiar to the code under which they act. In the list for 1882, published by the association, the following may be seen :

“MOBILE COUNTY.

“1. Names of members (of this Society), with their colleges, and post-offices : Anderson, W. H., University of Pennsylvania, Mobile.

“2. Names of regular physicians, not members of this Society : Beatty, W. G., Alabama Medical College, Whistler.

“3. Irregular practitioners in the county : Murrell, William J. (homœopathist), college not given, Mobile.”

The censors of Mobile County knew, or, if they did not know, any proper inquiry would have informed them, that Dr. William J. Murrell was not only a graduate from a homœopathic college of high standing, but also a graduate from one of the best “regular” colleges in this country, and that he was likewise possessed of what very few of his allopathic neighbors could boast, the diploma of a *Master of Arts*.

The question of damages for defamation of professional character, in the case of Dr. Murrell, is to be determined by the judiciary of Alabama. The term “irregular,” applied to a medical man, should have a judicial interpretation.

But the “conferring of exclusive privileges upon bodies of medical men” is not confined to State governments.

The Surgeon-General of the United States Army has arbitrarily determined that no applicant for position as a surgeon in the army shall be admitted to *examination*, unless he bears the diploma of a medical college belonging to a special class. The actual knowledge and skill of the applicant must pass

for nothing, and his claims be arbitrarily set aside, unless he has the indorsement of certain schools considered by the surgeon-general as "regular."

Not so, however, with the surgeon-general of the navy, who determines the qualifications of each applicant for a position in the naval medical service by a rigid examination, and admits or rejects upon merit, and not on the testimonials of any college of medical teachers whatever.

But it is not my purpose to particularize the various legislative acts and arbitrary rules in force for the protection of an assumed orthodoxy, and to favor certain medical faculties and associations in this country. I only wish to show their character and drift, in order to make myself properly understood in what I am about to say of the principles involved in American medical legislation.

1. Medical colleges are convenient and useful to the student of medicine, but they are not indispensable.

Nothing is taught in a medical school that may not be learned elsewhere, especially in this age of text-books and journals. With the increased facilities for recording and reporting scientific discoveries and clinical observations, the diligent student may become familiar with all that is taught by medical professors, without ever entering a lecture-room. Private dissecting-rooms and a good preceptor's office, and the chambers of the sick, in places remote from a medical college, have afforded the earnest student as much information as may be had in the medical schools and hospitals of a metropolis. That such institutions may afford him more conveniences, and may more readily fit him for professional life, no one will question.

They are the legitimate outgrowth of medical experiences and the aggregation of individual efforts in furnishing medical education. They are as the academy to the home schools of the governess and the tutor, as the theological seminary to the pastor's study, and as the law school to the lawyer's office.

Who would assert that no classical education is to be obtained outside of a literary college, no ecclesiastical training without a theological seminary, and no adequate knowledge of law except in attendance upon a chartered law school?

Or, who would advocate the enactment of a law prohibiting the functions of a clergyman to every person not possessed of a diploma from a recognized divinity school? Or, the prac-

tice of law to all attorneys not having graduated from a certain class of law schools?

If a diploma from some chartered medical college, some "regular" college in the Alabama sense of the term, is a *sine qua non*, and if the surgeon-general of the army, or a State legislature, is to require it at the hands of every physician or surgeon, before assuming the care of the sick or the injured, what should be done in the case of chaplains, and attorneys, and judges, who assume the care of human rights and human hopes of Heaven, without diplomas? But it is hardly necessary to argue the question as to the possibility of medical learning and skill in a practitioner who has received no college training.

A glance at the history of the healing art, and over the field of each one's daily observation, will reveal striking instances of extensive medical learning, and also of great practical skill in physicians who have never enjoyed the advantages afforded at a medical school, nor received the doctor's degree.

II. *Medical colleges cannot insure a proper understanding of medicine, nor guarantee skill in those to whom diplomas are given.*

The differences in young men, coming from college with the doctor's degree, must be noted even by the casual observer.

One is modest and respectful, while another is blatant of medical phrases and offensively obtrusive. One attentively listens to the old neighborhood physician, to whom no college had opened its friendly doors, and gathers in the fruits of his long experience, while the other scouts the wisdom of the sage who was, perchance, his own good grandmother's medical attendant, warmly protesting that all such are quacks, deserving immediate banishment from the field of medical practice.

One writes his prescriptions with exactitude and neatness, while the other worries the apothecary and the patient with bad spelling and horrid penmanship.

One soon surrounds himself with a well-selected library, and has his table full of the latest and best medical journals, while the other drops medical reading, on receipt of his medical diploma, and devotes more time to horses and vehicles and sports than to the study of diseases and remedies.

One is the friend of temperance and morality, the stay of the aged, and the thoughtful guide of the young, while the

other is a debauchee and moral leper, scattering the seeds of ruin in families where he is trusted.

Both of these young doctors have diplomas, such as are accepted in Illinois, and approved in New York, as showing their possessors to be fully qualified for practice, and deserving of confidence among the people.

In the face of such differences and deficiencies among college graduates, how can the State put her seal of authority upon all who bear diplomas from accredited schools, granting to them the exclusive right to practice the art of healing? And how can she rightfully deny the privilege of practicing that art to self-educated, painstaking and successful physicians, who have earned the confidence of the people among whom they reside, and are only lacking diplomas?

Illinois and some other States provide that such a practitioner may be examined by a board of censors, and, if able to answer the questions propounded, may receive a license to practice without a diploma. The questions propounded are such as would be put to a candidate for graduation from college and must embrace the subjects usually lectured on in an arbitrary curriculum.

Were I now writing for medical readers alone, I should not consider it necessary to say that all the cunning and knowledge, requisite to the greatest skill in the physician, are not imparted in the curriculum of any one medical school on earth.

It has been claimed in no mean quarter, that the healer of human maladies is *born*, not made,—that the underlying and actuating power to cure is a gift, an endowment, more than an acquisition gained by the study of other men's opinions and recommendations.

However that may be, and to whatever extent the power to heal is a natural faculty, it is a plain matter of fact that, outside the lecture course, and outside the sweep of questions that a candidate for a diploma or a license is expected to answer to the satisfaction of a faculty or an examining board, there are ways and means of cure that the successful physician must not ignore nor neglect.

Ling, the Swedish ecclesiastic, discovered and developed the wonderful reparative influences of passive and gymnastic movements in the machinery of the human body. He systematized and applied those movements for the cure of cases incurable by other means. And Priessnitz, the German peasant, led, as was Ling, by personal suffering and failure of cure by the practice of the day, discovered the wonderful influ-

ence of water, variously applied, for the cure of otherwise incurable eases. And to-day, so far as announced to the world, there is not a university nor a college, on the accredited list of Illinois and New York, that, in its curriculum, makes provision for the teaching of what was demonstrated and accomplished by Ling and Priessnitz and their followers. And there is not a board of medical censors in all this country, so far as I am informed, that is competent, if willing, to examine an applicant for a license, with regard to the Swedish movement and the water-cure.

I speak of these things, not to detract from our many excellent medical schools, but to show how futile is the idea that a diploma from any of them is a sufficient voucher that the holder knows all that is necessary or useful of the art of healing, and that he is to be trusted everywhere and on all occasions.

A diploma or a license is no more than a certificate that the holder has attended certain lectures, or answered certain questions upon some medical topics, considered important by a college faculty or an examining board.

Let voluntary associations of physicians, medical societies, call for diplomas in the hands of their members and associates if they like, and let public sentiment favor their possession by medical practitioners in general; but, let the State forever abstain from coupling its seal of authority with any such testimonials, and from conferring exclusive privileges, in the practice of medicine, upon their possessors.

III. *There are no fixed standards in medicine, with which State legislation may enforce conformity.*

Although much progress has been made in the study of the human body, and the influences which bear upon its complicated machinery in causing sickness and in restoring health, the domain of medicine is yet shrouded in mysteries, and its professors and practitioners are forever differing among themselves.

I could cover many pages here with the acknowledgments of eminent medical writers, ancient and modern, showing the want of substantial progress and the sad state of uncertainty in the accepted measures for the prevention and removal of human maladies. A wise saying is this,—“*In certis unitas, in dubiis libertas, in omnibus caritas,*”—and yet who has properly considered and counted the limited number of things in medicine that may be covered by the term “*certis*.”

Anatomy is the only branch taught in medical schools about which medical teachers do not differ.

Some things in chemistry and physiology and surgery and midwifery are pretty well settled, while the teachings on pathology, materia medica, and practice are as various and often as contradictory as can well be imagined, and that, too, in colleges approved as "regular" in New York, Illinois, Alabama, and Texas. Look into the text-books and journals of medicine, just from the press, and see the variations and contradictions as to the causes of disease, and the measures and means of relief.

As things often seen, much combated and constantly written upon, without agreement and without satisfaction, things only lately bearing death and desolation in portions of the earth, let me mention *Asiatic cholera* and *yellow fever*. How medical journals and daily newspapers have been filled, time and again, with disputes concerning these, by medical men bearing diplomas from the same medical schools!

In medicine, as in any other science or art, where discoveries and improvements are sought for, where perfection has not been attained, it is not only absurd, but simply impossible to have fixed formulas and standards with an *orthodoxy* and a *regularity* based upon them.

Suppose a State board of censors about to examine candidates for license; what kind of answers would be exacted touching the essential causes of intermittent fever, yellow fever, or cholera, or of small-pox, or scarlet fever, and the means of prevention and cure? What would be the standards?

How about the germ theory, the nature of contagion and infection, and the hundred other unsettled and pressing practical questions?

The attempt to erect standards by which to measure all practitioners of medicine, with a view of forcing them by legislative enactment to *conform or to quit*, is not only logically absurd, and practically useless, but, likewise, very damaging to medical discovery and improvement.

Does any one imagine that the Illinois State Board of Health in driving out a few notorious quacks, and compelling some diplomaless physicians to practice as "assistants" under the authority of partners or neighbors, has cleared the State of medical ignoramuses and impostors?

Look into Chicago, and see the medical tricksters, the quacks with diplomas, who flaunt their signs and posters in your face at every turn! Ask a physician there about the next-door

practitioner, and see him shrug his shoulders, and, if you promise secrecy, hear him tell how his neighbor stole through college, and how he tricks his fellows, and fools innocent people, and practices in ways that should send him to the penitentiary or the gallows!

While there are many eminent medical practitioners and writers and teachers in Illinois, there are not a few ignorant and worthless ones, unworthy a place among honest and decent people. After all the sifting and winnowing, under legislative authority, quite as much professional chaff and cheat may be found there as in any other State, having the same number of medical men. And, looking at the signs and posters and newspaper cards, offering medical service, and claiming superior skill, in New York, does anyone believe that the State-right, home-college monopoly act of that great commonwealth has put an end to medical quackery?

He who lacks a diploma, or makes unprofessional advertisements, or cures by secret or peculiar means, is not the only medical impostor. He who feigns the discovery in his patient of conditions not existing, or leads the weak and credulous into the belief that he has cured them of serious ailments which they never had, in order to filch their money, or make reputation for skill he knows he does not possess, all under cover of accredited diplomas, is the most genuine and dangerous of all impostors. He may not publish and honestly pay for newspaper advertisements, but he adroitly manages an "interview," or a report of some wonderful operation or cure for the city editor. His name, as the attending physician or surgeon of a person of rank or wealth, is never omitted in the news column. He manages to keep himself well before the public by many a trick, and greatly to impress those coming within his reach by devices not thought of by less cultured quacks.

New York is not wanting in able and honest physicians, nor yet in highly-polished and most cunning medical tricksters.

The most effective influence of medical legislation in New York, Illinois, and Alabama, is to drive medical students into certain colleges and societies in those States, much to the profit of institutions and individuals possessed of "exclusive privileges."

THE ALTERNATIVE.

I believe I am writing for a class of readers who will not construe what I have said into an opposition, on my part, to

medical education and medical schools, nor yet as an effort against some proper governmental protection of the people against medical deception and fraud. I yield to no one in appreciation of medical learning, and in advocacy of improved methods and extended terms at medical college; but I do most earnestly object to the assumption that there is only one road for the student of medicine to travel, one style and measure of training for him to receive, and one set of opinions for him to adopt, in order to qualify him for the practice of medicine, and I protest, in the language of Dr. Rush, against the "conferring of exclusive privileges upon bodies of physicians" in this country, which owes its progress and its greatness to a freedom from such unjust discriminations and hindrances.

I believe, so far as possible, all persons, attempting to cure the sick, should have a thorough knowledge of what has been discovered and successfully employed in that direction, as well as an acquaintance with anatomy, physiology, and other fundamental branches of a medical education; but I would not by legislative enactment prevent those from such humane work, who may have been denied college facilities; nor would I forbid, under heavy penalties, the exercise of the healing art to all who have not received a diploma, or been satisfactorily catechized by a board of examiners, made up of their associates and competitors on the field of practice.

I am compelled to recognize the possibility of great discoveries and good suggestions and eminent skill from outside the ranks of medical men in high places, when I remember Harvey's demonstration of the circulation of the blood and Jenner's advocacy of vaccination for the prevention of small-pox. I say, put up no legal barriers, when I see John Howard, the grocery-boy, teaching sanitary reform and good hospital management to the medical world; when I see Florence Nightingale leading all the well-trained military surgeons of Great Britain in camp hygiene, and Miss Dix removing from institutions for the insane abuses which had defied the endeavors of the most learned superintendents.

Howard and Nightingale and Dix had been at no medical college, and held no medical diplomas, and yet they accomplished reforms in the domain of medicine that will cause them to be remembered when the present holders of "exclusive privileges," the champions of a medical orthodoxy, will be entirely forgotten.

To divert me from this line of argument, the question comes:

“Is there nothing that the State should do for the protection of her people against medical imposition?”

With great cheerfulness, I answer, yes. It is the duty of the State to so enlighten her citizens in regard to those who would assume the care of human health and life that they may be able to select medical advisers and attendants safely and with satisfaction. Let a law be enacted that every practitioner of the healing art, in any of its branches, shall register his name and age in a book (kept for the purpose and open to public inspection by the county clerk) with all his literary and professional titles attached.

And let it be provided that, after the name, age, and titles, the practitioner shall state :

1. Where, when, with whom, and for what term, he pursued the study of medicine ;
2. At what schools he received literary, scientific, and professional instruction, and from which, and in what year, he received diplomas, or certificates of proficiency ;
3. If previously in practice, where and for what length of time at each place ;
4. If a member of any medical society or association, what its name and where its location.

And let it be provided that the county clerk shall take the acknowledgment of the practitioner registering, that all the statements of his personal and professional record are true ; and thereupon let the clerk be required to issue a transcript of the record, as sworn to, bearing the official seal, and let this transcript be the only license required in the case of a resident practitioner.

And let it, also, be enacted that each non-resident or transient practitioner shall, in consideration of his not being assessed, and not being compelled to bear the usual burdens of taxation, be required to pay for his license the sum of two hundred dollars for each month, or fraction of a month.

And let penalties be provided for practitioners who fail to report, and for such as may have made any false statements on the medical register.

The effect of such legislation, in no wise unfair or oppressive, would furnish to the people, whose highest earthly interests are at stake, information upon which to judge as to the probable medical acquirements and skill of the physicians in their midst. In the absence of such authentic information, it

is quite impossible for the laity to tell who have really devoted time and study to medicine, who have been at the best medical schools, who have had experience, and, so, who are most to be trusted in the hour of suffering and danger.

Legislation for the enlightenment of the people would call for no lordly boards of censors, and would stop the farcical play of a great State attempting to hunt down quack doctors for the benefit of a few medical colleges, when herself unable to distinguish a quack from a medical sage, both having the cover of a diploma.

It would leave the responsibility of selection where it rightfully belongs, on those who employ medical attendants, and who must gain or lose by their ministrations. It would leave the guides to physical health as free as the guides to spiritual health, with no more State medicine than State religion. And, as regards medical colleges, while it would give them no exclusive privileges, no monopoly in medical education, it would elevate the standard among them by insuring free competition and the full rewards of merit.

The State may not rightfully compel the possession of a diploma or a certificate from an examining board, that has measured all practitioners with the same line, or stretched them on one Procrustean bed, but she may properly and readily compel them to furnish facts, upon which they may be judged, at least, as to what they have done to qualify themselves for practice. She may not prohibit the people their choice of medical attendants, but she may so enlighten them that they can wisely choose for themselves. She may not be able to force medical learning, but she can do much to encourage and induce medical men to seek it earnestly, and where it may best be found, by compelling them to tell where and how they were educated. She may not forbid the coming of loud-mouthed charlatans, but she can wondrously moderate their deceptive brag by a little enforced autobiography.

She may not directly stop the flow of her citizens' money into the pockets of the peripatetic pretender, but she can render the cost of his license such as to make his visits few and far between.

In closing, I must refer briefly to expressions on the subject I am discussing, from two prominent representatives, one of the medical profession in America, and the other of the scientists of Great Britain.

Professor William K. Bowling, the founder and long the

peerless editor of the *Nashville Journal of Medicine and Surgery*, a few years ago, in noticing some medical bills, pending in the General Assembly of Tennessee, wrote as follows :

"Every few years, some one gets up a bill in the legislature to 'protect' competent medical practitioners by fining incompetent ones, and forcing them out of the field. This is to be accomplished by the exclusion of those who have no diplomas, or by examining boards to ascertain the qualifications of those who would practice medicine, irrespective of diploma-holding."

Speaking of the laity, he said : "Do *they* not know who does them most good when sick, and who lucks best? Qualifications? Bah! Pretty is that pretty does! This is the logic of the masses, and the king of our country is the aggregate of the masses. . . . This *Journal* has set its face, like flint, for a quarter of a century, against the meddling of non-medical men with medical affairs, its motto being : 'To medical men belong medical matters.' Our State Society has taken similar ground. Every medical man we have seen and conversed with upon the subject, is dead set against the pollution that law can bring to medicine. The language of each is : 'If I cannot stand without props, let me fall,' and this is the language of common sense."

Professor Huxley, at the late opening of the medical school at the London Hospital, said : "A large number of persons seem to be of the opinion that the State is bound to take care of the general public, and see that it is protected against incompetent persons and quacks. I do not take this view. I think it much more wholesome for the public to take care of itself in this as in all other matters."

He thought the only occasion for governmental interference in the affairs of the medical profession, was to be found in compelling proper death certificates, and proper qualifications for official positions.

It is to be hoped that our national and State governments will return to the simple and wise ways of the fathers of the republic, and refuse the exercise of their authority in behalf of medical guilds and monopolies, and against the progress of medical discovery and improvement.

In medical legislation, let the motto be : **LIGHT FOR THE PEOPLE, AND FREEDOM FOR THE PROFESSION.**

